Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

QUIRINO M. LIBUNAO,
Petitioner,

- *versus* -

PEOPLE OF THE PHILIPPINES,
Respondent.

G.R. Nos. 214336-37

Present:

CAGUIOA, *J., Acting Chairperson,*
LAZARO-JAVIER,
LOPEZ, M.,
LOPEZ, J., and
DIMAAMPAO,* *JJ.*:

Promulgated:

FEB 15 2022

x----------x

DECISION

LOPEZ, J., *J.*:

Before the Court is a Consolidated Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated January 16, 2014 and the Resolution[3] dated September 12, 2014 of the Sandiganbayan, First Division (*Sandiganbayan*), in Criminal Case Nos. 27803 and 27805, convicting petitioner Quirino M. Libunao of violation of Section 3(e) of Republic Act (*R.A.*) No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.

---

* Designated additional member in lieu of Chief Justice Alexander G. Gesmundo per Raffle dated November 29, 2021.

1 *Rollo*, pp. 3-52.

2 Penned by Chairperson/Associate Justice Efren N. De La Cruz with Associate Justices Rodolfo A. Ponferrada and Rafael R. Lagos, concurring; *id.* at 57- 122

3 *Id.* at 123-127.

9

The Antecedents

At the heart of the present controversy is the Countrywide Development Fund (*CDF*) allocated to accused Constantino H. Navarro, Jr., then Surigao Del Norte First District representative. By virtue of Assignment Order No. 00-002 dated January 17, 2000, the Commission on Audit (*COA*) conducted a special review of the utilization of Navarro's CDF for the years 1997 to 1998. The audit team discovered that ₱13,832,569.00 of said CDF was used to purchase, on different occasions, assorted medicines, *shabu* testing kits, nebulizing machines, sporting materials, rice paddy plows (*araro*), blackboard erasers, chalks, and notebooks from various suppliers. But instead of conducting a public bidding, the purchase was done through direct contracting, in violation of Section 3 of Executive Order (*E.O.*) No. 302[4] resulting in an overpricing of the items purchased amounting to ₱2,863,689.36 or equivalent to 13.6% to 506% of the prevailing market prices. Consequently, the COA issued Notices of Disallowance dated January 23, 2001.[5]

After due proceedings and finding probable cause, the Office of the Ombudsman criminally charged the following persons before the Sandiganbayan for their involvement in the said illegal purchases:

(1) Congressman Constantino H. Navarro, Jr. (*Navarro*);

(2) Quirino M. Libunao (*Libunao*), Carlos T. Derecho (*Derecho*), and Romeo S. Jardenico (*Jardenico*), all as Regional Directors of the Department of Interior and Local Government (*DILG*)-Caraga Region, the implementing agency at the time of the transactions;

(3) Benito R. Catindig (*Catindig*), as Assistant Secretary for Support Services, and Regional Operations, DILG-Quezon City;

(4) Iluminada C. Tuble (*Tuble*), President of San Marino Laboratories Corporation (*San Marino*);

(5) Marlene B. Corpus (*Corpus*), Owner-Proprietor of Mt. Bethel Pharmaceutical (*Mt. Bethel*);

(6) Edwin L. Dizon (*Dizon*), as owner-proprietor of E.G. Trading;

---

4 E.O. No. 302, Providing Policies, Guidelines, Rules and Regulations for the Procurement of Goods/Supplies by the National Government, February 19, 1996.

5 *Rollo*, pp. 70-71; 87.

(7) Gerardo A. Rosario (*Rosario*), owner-proprietor of Revelstone Sales International (*Revelstone*); and

(8) Mario Tokong (*Tokong*), representative of Revelstone Sales International.[6]

In several Informations docketed as Criminal Case Nos. 27796-27805, the accused public officers were charged for acting in evident bad faith and manifest partiality in giving unwarranted benefits to the accused suppliers by entering into contracts without the benefit of public bidding. The accusatory portions of the Amended/Re-Amended Informations filed against Libunao and said public officers, read:

Criminal Case No. 27803

That in the month of October 1998, or sometime prior or subsequent thereto, in Region XIII, Caraga, Philippines, and within the jurisdiction of this Honorable Court, accused **CONSTANTINO H. NAVARRO, JR., QUIRINO M. LIBUNAO,** and **BENITO R. CATINDIG**, both high ranking public officials, being then the Congressman of the 1st District of Surigao del Norte, the Regional Director of the Department of Interior and Local Government (DILG)-Caraga Region, and Assistant Secretary for Support Services & Regional Operations, DILG-Quezon City, respectively, all high ranking public officials, committing the offense in relation to their official duties and taking advantage of their official functions, conspiring and confederating with each other and with accused **ILUMINADA C. TUBLE, President of San Marino Laboratories Corporation**, a private enterprise, and mutually helping one another, with evident bad faith and manifest partiality (or at the very least, through gross inexcusable negligence), did then and there willfully, unlawfully, and criminally give unwarranted benefits, advantage and preference to **San Marino Laboratories Corporation** and cause undue injury to the Government, by entering into a contract, without conducting the required public bidding, with said **San Marino Laboratories,** for the purchase of forty five (45) boxes of assorted medicine in the amount of TWO MILLION PESOS (₱2,000,000.00), which price was manifestly and grossly disadvantageous to the government considering that similar medicines available in the market, as canvassed by the Commission on Audit (COA), could have been purchased at only SEVEN HUNDRED SIXTY TWO THOUSAND TWO HUNDRED SIXTY TWO & 25/100 PESOS (₱762,262.25), inclusive of 10% allowance, thereby resulting to an overprice in the total amount of ONE MILLION TWO HUNDRED THIRTY SEVEN THOUSAND SEVEN HUNDRED FORTY & 75/100 PESOS (₱1,237,740.75), to the damage and prejudice of the government in the aforesaid amount of overprice.

CONTRARY TO LAW.[7]

x x x x.

---

6 *Id.* at 59-70.

7 *Id.* at 64-65.

Criminal Case No. 27805

That during the period from October 16, 1998 to December 10, 1998, or sometime prior or subsequent thereto, in Region XIII, Caraga, Philippines, and within the jurisdiction of this Honorable Court, accused **CONSTANTINO H. NAVARRO, JR., QUIRINO M. LIBUNAO,** and **BENITO R. CATINDIG**, both high ranking public officials, being then the Congressman of the 1st District of Surigao del Norte, the Regional Director of the Department of Interior and Local Government (DILG)-Caraga Region, and Assistant Secretary for Support Services & Regional Operations, DILG-Quezon City, respectively, all high ranking public officials, committing the offense in relation to their official duties and taking advantage of their official functions, conspiring and confederating with each other and with accused **GERARDO A. ROSARIO** and **MARIO TOKONG, proprietor and representative, respectively, of Revelstone Sales International,** a private enterprise, and mutually helping one another, with evident bad faith and manifest partiality (or at the very least, through gross inexcusable negligence), did then and there willfully, unlawfully, and criminally give unwarranted benefits, advantage and preference to **Revelstone Sales International** and cause undue injury to the Government, by entering into a contract, without conducting the required public bidding, with said **Revelstone Sales International,** for the purchase of one thousand two hundred (1,200) sets of *araro* tools in the amount of NINE HUNDRED THOUSAND PESOS (₱900,000.00), which price was manifestly and grossly disadvantageous to the government considering that similar *araro* tools available in the market, as canvassed by the Commission on Audit (COA), could have been purchased at only SEVEN HUNDRED NINETY TWO THOUSAND PESOS (₱792,000.00), inclusive of 10% allowance, thereby resulting to an overprice of in the total amount of ONE HUNDRED EIGHT THOUSAND PESOS (₱108,000.00), to the damage and prejudice of the government in the aforesaid amount of overprice.

CONTRARY TO LAW.[8]

Upon arraignment, Libunao pleaded not guilty to the offense charged. Hence, trial on the merits ensued. To establish its case, the prosecution presented the testimonies of Rosalina G. Salvador, an auditor of the COA, Ruby D. Pascual, a pharmacist editor, Manuel M. Parian, Deputy Regional Chief of the Philippine National Police Crime Laboratory, and Manuel Dy Sio, a businessman engaged in selling hardware and farm construction supplies.[9]

In Criminal Case No. 27803, the prosecution established that Navarro requisitioned for the purchase of 45 boxes of assorted medicines in the amount of ₱2,000,000.00 from San Marino. Libunao approved the transactions, certified that the expense was necessary, lawful, and incurred under his direct supervision; he then signed checks payable to San Marino. This was supported by documentary exhibits such as Requisition and Issue

---

8 *Id.* at 66.

9 *Id.* at 70-77.

Vouchers (*RIVs*), Purchase Orders (*POs*), Disbursement Vouchers (*DVs*), certificates, and checks.[10]

In Criminal Case No. 27805, it was established that Navarro requisitioned for 1,200 sets of *araro* tools in the amount of ₱900,000.00 from Revelstone. Again, Libunao approved the transactions, certified that the expense was necessary, lawful, and incurred under his direct supervision, and he signed the checks payable to Revelstone. These were also supported by documentary exhibits such as RIVs, POs, DVs, certificates, and checks.[11]

In his defense, Libunao testified that he assumed his position as Regional Director of DILG-Caraga based in Butuan City on October 17, 1998. According to him, he signed the documents in relation to the transactions relying on his subordinates who assured him that the same were in order. Since his position as regional director had many functions, he had to rely on these financial people who prepared the documents he signed.[12]

On January 16, 2014, the Sandiganbayan found that the prosecution successfully proved with moral certainty that public officers, Libunao and Derecho gave unwarranted benefits to Revelstone, San Marino, Mt. Bethel, and E.G. Trading when they resorted to direct contracting, instead of public bidding. As for the accused suppliers Rosario, Tuble, Corpus, and Dizon, however, it was held that the prosecution failed to establish the same quantum of proof that they were patently propelled by criminal designs when they allowed their companies to receive undue benefits. Thus, with respect to Libunao in Criminal Case Nos. 27803 and 27805, the Sandiganbayan disposed as follows:

> IN LIGHT OF ALL THE FOREGOING, the Court hereby renders judgment as follows:
>
> x x x x
>
> 7. In Criminal Case No. 27803, accused QUIRINO M. LIBUNAO is found guilty beyond reasonable doubt of violation of Section 3(e) of RA 3019, and pursuant to Section 9 thereof, is hereby sentenced to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) month as minimum up to ten (10) years as maximum, with perpetual disqualification from holding public office.
>
> Accused ILUMINADA C. TUBLE, is hereby ACQUITTED for failure of the prosecution to prove her guilt beyond reasonable doubt.
>
> x x x x

---

10 *Id.* at 96-97.
11 *Id.* at 99-100.
12 *Id.* at 78.

> 9. In Criminal Case No. 27805, accused QUIRINO M. LIBUNAO is found guilty beyond reasonable doubt of violation of Section 3(e) of RA 3019, and pursuant to Section 9 thereof, is hereby sentenced to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) month as minimum up to ten (10) years as maximum, with perpetual disqualification from holding public office.
>
> Accused GERARDO A. ROSARIO, is hereby ACQUITTED for failure of the prosecution to prove his guilt beyond reasonable doubt.
>
> x x x x
>
> Except for accused Tuble who is hereby ordered to pay the DILG-CARAGA the amount of ₱1,071,721.80, no civil liability may be assessed against accused Rosario, Corpus and Dizon considering that the act or omission from which the civil liability might arise does not exist.
>
> Let the hold departure order against accused Rosario, Tuble, Corpus and Dizon by reason of this case be lifted and set aside, and their bonds released, subject to the usual accounting and auditing procedure.
>
> SO ORDERED.[13]

Libunao moved for the reconsideration of the Sandiganbayan's January 16, 2014 Decision.[14] On September 12, 2014, however, said court denied petitioner's Motion for Reconsideration and undated Supplemental Motion for Reconsideration for lack of merit.[15]

Unfazed, Libunao filed the present petition on October 9, 2014 essentially reiterating the following arguments:

> I.
>
> THE HONORABLE SANDIGANBAYAN VIOLATED PETITIONER'S CONSTITUTIONAL RIGHT TO DUE PROCESS AND TO BE INFORMED OF THE NATURE AND CAUSE OF ACCUSATION AGAINST HIM.
>
> A. PETITIONER WAS CONVICTED OF A CRIME DIFFERENT FROM THOSE CHARGED IN THE INFORMATIONS, AMENDED INFORMATIONS, AND RE-AMENDED INFORMATIONS.
>
> B. THE THEORY THAT OFFENSE WHEREIN WHICH PETITIONER WAS CONVICTED INCLUDES OR IS NECESSARILY INCLUDED IN THE OFFENSE CHARGED IN THE INFORMATION IS NOT APPLICABLE IN THIS CASE.

---

13 *Id.* at 120-121.
14 *Id.* at 57- 122.
15 *Id.* at 123-127.

C. ALLOWING THE PETITIONER TO BE CONVICTED OF A CRIME DIFFERENT FROM WHAT HE IS CHARGED WOULD BE VIOLATIVE OF THE PROHIBITION AGAINST DUPLICITY OF OFFENSE AS STATED IN SECTION 13, RULE 110 OF THE RULES OF COURT AND THE CONSTITUTIONAL RIGHT TO BE INFORMED OF THE CHARGES AGAINST HIM.

II.

THERE COULD BE NO VIOLATION OF SECTION 3(g) OF R.A. NO. 3019 AS THE PROSECUTION WAS NOT ABLE TO PROVE THE EXISTENCE OF THE ELEMENTS THEREOF.

A. PETITIONER DID NOT ENTER INTO ANY CONTRACT WITH THE PRIVATE SUPPLIERS IN THE PURCHASE AND DELIVERY OF THE GOODS.

B. THERE IS NO CONSPIRACY.

III.

ASSUMING *ARGUENDO* THAT SECTION 3(e) OF R.A. NO. 3019 WAS ALLEGED IN THE INFORMATION, THE ELEMENTS THEREOF WERE NOT PROVEN BEYOND REASONABLE DOUBT.[16]

Libunao argues that the Sandiganbayan violated his constitutional right to due process and to be informed of the nature and cause of accusation against him by convicting him under Section 3(e) of R.A. No. 3019 when he was actually charged in the Informations of an offense under Section 3(g) thereof. He claimed that there was neither identity nor exclusive inclusion between the two offenses. To insist that one is a mode or manner of committing the other violates the principle of duplicity of offense in Section 13[17] of Rule 110 of the Revised Rules of Criminal Procedure. Be that as it may, petitioner posits that even assuming the possibility of the same, he must still be acquitted for failure of the prosecution to prove the elements of either Section 3(e) or Section 3(g).

Our Ruling

The petition is devoid of merit.

Prefatorily, it must be remembered that petitions for review on *certiorari* under Rule 45, such as the one filed by petitioner, must raise only questions of law. Settled is the rule that issues raised on whether the

---

16 *Id.* at 33-34.

17 Section 13. *Duplicity of the offense.* — A complaint or information must charge but one offense, except when the law prescribes a single punishment for various offenses.

prosecution's evidence proved the guilt of the accused beyond reasonable doubt, or whether the presumption of innocence was properly accorded, the accused are all, in varying degrees, questions of fact.[18] In view of the absence of the recognized exceptions[19] to this rule, the Court shall refrain from reviewing the factual findings of the Sandiganbayan as it duly considered the totality of circumstances that led to the conclusion that petitioner violated the law.

To begin with, petitioner failed to substantiate his claim that his constitutional rights were violated. Petitioner makes much of the fact that the charge was *designated as* Section 3(g) in assailing the validity of the Informations filed against him. However, well-entrenched in jurisprudence is the *dictum* that it is not the technical name given by the prosecutor appearing in the title of the information, but the facts alleged in the body of the information that determines the character of the crime.[20] As early in *United States v. Lim San*,[21] the Court has explained that:

> From a legal point of view, and in a very real sense, it is of no concern to the accused what is the technical name of the crime of which he stands charged. It in no way aids him in a defense on the merits. x x x. That to which his attention should be directed, and in which he, above all things else, should be most interested, are the facts alleged. The real question is not did he commit a crime given in the law some technical and specific name, but did he perform the acts alleged in the body of the information in the manner therein set forth. If he did, it is of no consequence to him, either as a matter of procedure or of substantive right, how the law denominates the crime which those acts constitute. The designation of the crime by name in the caption of the information from the facts alleged in the body of that pleading is a conclusion of law made by the fiscal. In the designation of the crime the accused never has a real interest until the trial has ended. For his full and complete defense[,] he need not know the name of the crime at all. It is of no consequence whatever for the protection of his substantial rights. The real and important question to him is, "Did you perform the acts alleged in the manner alleged?" not "Did you commit a crime named murder." If he performed the acts alleged, in the manner stated, the law determines what the name of the crime is and fixes the penalty therefor. It is the province of the court alone to say what the name of the crime is or what it is named. x x x.[22]

Indeed, what is controlling is not the title of the complaint or the designation of the offense charged or the particular law or part thereof allegedly violated, these being mere conclusions of law made by the prosecutor, but the description of the crime charged and the particular facts

---

18 *Jaca v. People*, 702 Phil. 210, 238 (2013).

19 *Id.*, provides that among the exceptions are: (1) the conclusion is a finding grounded entirely on speculations, surmise[s], and conjectures; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; and (5) the findings of fact of the Sandiganbayan are premised on the absence of evidence and are contradicted by evidence on record.

20 *People v. Dasmariñas*, 819 Phil. 357, 374 (2017).

21 17 Phil. 273 (1910).

22 *Id.* at 278-279, cited in *Consigna v. People*, 731 Phil. 108, 120-121 (2014).

therein recited.[23] As long as the crime is described in intelligible terms and with such particularity and reasonable certainty that the accused is duly informed of the offense charged, then the information is considered sufficient.[24] If the elements of the crime are duly alleged in the information, the accused can be rest assured of being informed of the nature of the accusation against him so as to enable him to suitably prepare his defense.[25]

It would not take more than a plain and simple reading of the Re-Amended Informations herein to be properly apprised of the nature of the offense charged against petitioner. Specifically, he, together with his co-accused, Navarro and Catindig, all high-ranking public officers, were accused of acting with evident bad faith and manifest partiality or at the very least, through gross inexcusable negligence, in giving unwarranted benefits, advantage and preference to another, and thereby causing undue injury to the Government, by entering into a contract for the purchase of various goods at disadvantageous prices without conducting the required public bidding. One cannot mistake this to be something other than the elements of a violation of Section 3(e)[26] of R.A. No. 3019.

Accordingly, petitioner's claim that the Informations violate the rule on duplicity of offenses in Section 13, Rule 110 of the Rules of Court is untenable. As a general rule, a complaint or information must charge only one offense, otherwise, the same is defective.[27] Petitioner insists that the Informations accused him of both Sections 3(e) and 3(g). The argument fails to convince. While it is true that entering into a contract is also an element of Section 3(g),[28] We agree with the Sandiganbayan that the allegation can be considered simply as the means by which the accused persons violated Section 3(e).[29] As such, his conviction under the latter could not have been on a defective Information.

But even assuming that the Informations charged more than one offense, the fact remains that petitioner did not question the validity of the same before entering his plea. Time and again, the Court has held that an accused who fails to move for the quashal of a duplicitous Information is deemed to have waived his right to question the same.[30] This is in

---

23 *People v. Dimaano*, 506 Phil. 630, 649 (2005).

24 *Supra* note 18, at 239.

25 *Id.*

26 *Reyes v. Ombudsman*, 783 Phil. 304, 336 (2016), provides that the elements of violation of Section 3(e) of R.A. No. 3019 are: (a) that the accused must be a public officer discharging administrative, judicial, or official functions (or a private individual acting in conspiracy with such public officers); (b) that he acted with manifest partiality, evident bad faith, or inexcusable negligence; and (c) that his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage, or preference in the discharge of his functions.

27 *People v. Court of Appeals*, 755 Phil. 80, 116 (2015).

28 *Froilan v. Sandiganbayan*, 385 Phil. 32, 44 (2000), provides that the elements of Section 3(g) of R.A. No. 3019, are: (a) that the accused is a public officer; (b) that he entered into a contract or transaction on behalf of the government; and (c) that such contract or transaction is grossly and manifestly disadvantageous to the government.

29 *Rollo*, p. 125.

30 *People v. Jugueta*, 783 Phil. 806, 822 (2016).

consonance with Section 9, Rule 117 of the Revised Rules of Court, which provides that "[t]he failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections except those based on the grounds provided for in paragraphs (a), (b), (g), and (i) of Section 3 of this Rule."[31] Indeed, when two or more offenses are charged in a single complaint or information but the accused fails to object to it before trial, the court may convict him of as many offenses as are charged and proved, and impose upon him the proper penalty for each offense.[32]

Ultimately, petitioner can no longer deny the validity of the Informations against him. In no uncertain terms, said Informations sufficiently charged him with violation of Section 3(e) of R.A. No. 3019 carefully identifying the essential elements thereof. Section 3(e) of R.A. No. 3019 states:

> SECTION 3. *Corrupt practices of public officers.* — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
>
> x x x x
>
> (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

In *Tio v. People*,[33] We laid down the elements of Section 3(e), to wit: (1) that the accused is a public officer discharging administrative, judicial, or official functions, or a private individual acting in conspiracy with such public officer; (2) that he acted with manifest partiality, evident bad faith, or gross inexcusable negligence; and (3) that his action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage, or preference in the discharge of his functions. We find no cogent reason to deviate from the Sandiganbayan's

---

31 Section 3. *Grounds.* — The accused may move to quash the complaint or information on any of the following grounds:
(a) That the facts charged do not constitute an offense;
(b) That the court trying the case has no jurisdiction over the offense charged;
x x x x
(g) That the criminal action or liability has been extinguished;
x x x x
(i) That the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent.

32 *Supra* note 27, at 117.

33 G.R. Nos. 230132 & 230252, January 19, 2021.

finding that the elements of the crime charged were sufficiently proven beyond reasonable doubt.

The *first* element is self-explanatory. As borne by the records, petitioner was a public officer acting in his official capacity as Regional Director of the DILG-Caraga at the time of the commission of the crime.

The *second* element pertains to the modalities by which the offense may be committed. Well-settled is the rule that proof of any of the three modes, namely: manifest partiality, evident bad faith, or gross inexcusable negligence, in connection with the prohibited acts mentioned in Section 3(e) of R.A. No. 3019 is enough to convict.[34] In a long line of cases,[35] the Court elucidated that:

> There is "**manifest partiality**" when there is clear, notorious, or plain inclination or predilection to favor one side or person rather than another. "**Evident bad faith**" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. "Evident bad faith" contemplates a state of mind affirmatively operating with furtive design or with some motive of self-interest or ill will or for ulterior purposes. "**Gross inexcusable negligence**" refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.[36]

The *third* element requires that the act constituting the offense must consist of *either* (1) causing undue injury to any party, including the government, *or* (2) giving any private party any unwarranted benefits, advantage or preference in the discharge by the accused of his official, administrative or judicial functions.[37] The former act need not be proven with actual certainty but by some reasonable basis by which the court can measure it.[38] As for the latter act, it suffices that the accused has given unjustified favor or benefit to another in the exercise of his official, administrative or judicial functions.[39] The word "unwarranted" means lacking adequate or official support; unjustified; unauthorized or without justification or adequate reason. "Advantage" means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit

---

34 *People v. Naciongayo*, G.R. No. 243897, June 8, 2020.

35 *Id.*; *Tio v. People*, *supra* note 33; *Villarosa v. People*, G.R. Nos. 233155-63, June 23, 2020; *Sabaldan, Jr. v. Office of the Ombudsman for Mindanao*, G.R. No. 238014, June 15, 2020; *Rivera v. People*, G.R. No. 228154, October 16, 2019; *Cabrera v. People*, G.R. Nos. 191611-14, July 29, 2019; *Sabio v. Sandiganbayan (First Division)*, G.R. Nos. 233853-54, July 15, 2019; *Abubakar v. People*, 834 Phil. 435, 472 (2018).

36 *Id.*

37 *Villarosa v. People*, *supra* note 35.

38 *Cabrera v. People*, *supra* note 35.

39 *Villarosa v. People*, *supra* note 35.

from some course of action. "Preference" signifies priority or higher evaluation or desirability; choice or estimation above another.[40]

The *second* and *third* elements discussed above are positively proven by the records of the case. We, therefore, find no error in the Sandiganbayan's ruling that petitioner gave unwarranted benefit, advantage, or preference to San Marino and Revelstone through gross inexcusable negligence in approving the subject transactions despite the absence of public bidding.

Section 3 of E.O. No. 302[41] expressly provides that awarding of contracts shall be done through public/open competitive bidding to ensure efficiency and equitable treatment. As an exception to the rule, its Implementing Rules and Regulations (*IRR*) enumerates the conditions under which direct contracting instead of public bidding may be resorted to:

> a. Procurement of items of proprietary nature which can be obtained only from the proprietary source, i.e., when patents, trade secrets and copyrights prohibit others from manufacturing the same item;
>
> b. Those sold by an exclusive dealer or manufacturer which does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the Government;
>
> c. When the procurement of critical plant components from a specialist manufacturer/supplier/distributor serves as a precondition of a contractor responsible for the erection of the project for his guarantee of project performance;
>
> d. For purposes of maintaining standards, such as a purchase involving a small addition to an already existing fleet of equipment;
>
> e. In emergencies where procurement must be immediately accomplished regardless of cost. Emergencies shall be defined as those situations where there is imminent danger to life and/or property as determined by the Head of Agency concerned or his duly authorized representative.

Settled is the rule that as a matter of policy, public contracts are awarded through competitive public bidding. Not only does competitive bidding give the public the best possible quality of goods and services garnering contracts most favorable to the government, it also avoids suspicion of favoritism and anomalies in the execution of public transactions.[42] It promotes transparency in government transactions and accountability of public officers as it minimizes occasions for corruption and temptations to abuse of discretion on the part of government authorities

---

40 *Id.*

41 Providing Policies, Guidelines, Rules and Regulations for the Procurement of Goods/Supplies by the National Government, February 19, 1996.

42 *Abubakar v. People, supra* note 35, at 474-475.

9

in awarding contracts.[43] For these reasons, important public policy considerations demand the strict observance of procedural rules relating to the bidding process.[44]

In the present case, not only were the subject purchases of medicines and *araro* tools done through direct contracting; petitioner utterly failed to present any justification sufficient to forego the conduct of a competitive public bidding as expressly mandated by E.O. No. 302. Neither was there any effort to invoke the exceptions under the IRR. In an attempt to exculpate himself from liability, he merely engaged in a finger-pointing expedition seeking to pass the blame to both his superiors as well as his subordinates. Unfortunately for him, however, We cannot give credence to his defenses in light of the glaring evidence of his gross inexcusable negligence.

As duly pointed out by the Sandiganbayan, petitioner was the Regional Director of the DILG, no less, who served thereat for 39 years. It is the mandate of the DILG, as an agency that acts on behalf of the President to achieve the effective delivery of basic services to the citizenry.[45] Explicit in its Charter is its duty to faithfully conduct the procurement process in strict compliance with the provisions of applicable law on procurement.[46] Hence, in all procurement of goods and services, the DILG ensures that they be governed by the principles of: (1) transparency in the process and implementation of contracts; (2) competitiveness by extending equal opportunity to enable all eligible parties to participate in public bidding; (3) streamlined procurement process that will uniformly apply to all government procurement; (4) system of accountability where both public officials directly or indirectly involved in the procurement process are held liable for their actions relative thereto; and (5) public monitoring to guarantee that contracts are awarded strictly in accordance with law.[47]

The Court cannot, in good conscience, accept his reasoning that Navarro was "a very powerful congressman" and as such, he simply implemented the directive to approve the transactions with the pre-selected suppliers. It is well to remember that the power of members of the House of Representatives on the disbursement of the CDF is limited to the identification of projects, while the determination of the mode of procurement is vested in the DILG, which in this case, was under the leadership of petitioner. As such, he was mandated by law to make an independent assessment of the subject contracts. However, despite the blatant absence of the required public bidding, he fully consummated the illegal transactions in blindly signing the POs, RIVs, certifications, and

---

43 *Cabrera v. People*, *supra* note 35.

44 *Id.*

45 R.A. No. 6975, An Act Establishing the Philippine National Police under a Reorganized Department of the Interior and Local Government, and for other Purposes; Department of the Interior and Local Government Act of 1990; Approved on December 13, 1990.

46 DILG Citizen's Charter, 2020 (2nd Edition); last accessed on May 18, 2021.

47 DILG Memorandum Circular No. 2016-96, July 15, 2016.

checks payable to the pre-selected companies. Indeed, the Sandiganbayan is justified in saying that by tolerating the direct purchase from Navarro's favored suppliers, petitioner reduced his office to a mere puppet.[48] Contrary to his incessant claims that he merely exercised a ministerial duty, it was because of his gross inexcusable negligence that allowed San Marino and Revelstone to derive unwarranted benefit, advantage or preference from the subject transactions.

As the head of the very agency tasked with ensuring that government contracts strictly adhere to the laws on procurement, the Court cannot reduce petitioner's acts to simple errors of judgment. At the time of the commission of the offense in 1998, E.O. No. 302, had already been in existence since its passage in 1996. In fact, during said time, the concept of procurement through public bidding can hardly be considered novel or complex so as to excuse petitioner's non-compliance therewith. As can be seen in Our discussion in *Abaya v. Sec. Ebdane, Jr.*,[49] the laws on procurement dates back to the 1900s, thus:

> *History of Philippine Procurement Laws*
>
> It is necessary, at this point, to give a brief history of Philippine laws pertaining to procurement through public bidding. The United States Philippine Commission introduced the American practice of public bidding through Act No. 22, enacted on October 15, 1900, by requiring the Chief Engineer, United States Army for the Division of the Philippine Islands, acting as purchasing agent under the control of the then Military Governor, to advertise and call for a competitive bidding for the purchase of the necessary materials and lands to be used for the construction of highways and bridges in the Philippine Islands. Act No. 74, enacted on January 21, 1901 by the Philippine Commission, required the General Superintendent of Public Instruction to purchase office supplies through competitive public bidding. Act No. 82, approved on January 31, 1901, and Act No. 83, approved on February 6, 1901, required the municipal and provincial governments, respectively, to hold competitive public biddings in the making of contracts for public works and the purchase of office supplies.
>
> On June 21, 1901, the Philippine Commission, through Act No. 146, created the Bureau of Supply and with its creation, public bidding became a popular policy in the purchase of supplies, materials and equipment for the use of the national government, its subdivisions and instrumentalities. On February 3, 1936, then President Manuel L. Quezon issued E.O. No. 16 declaring as a matter of general policy that government contracts for public service or for furnishing supplies, materials and equipment to the government should be subjected to public bidding. The requirement of public bidding was likewise imposed for public works of construction or repair pursuant to the Revised Administrative Code of 1917.

---

48 *Rollo*, pp. 109-110.

49 544 Phil. 645 (2007).

> Then President Diosdado Macapagal, in E.O. No. 40 dated June 1, 1963, reiterated the directive that no government contract for public service or for furnishing supplies, materials and equipment to the government or any of its branches, agencies or instrumentalities, should be entered into without public bidding except for very extraordinary reasons to be determined by a committee constituted thereunder. Then President Ferdinand Marcos issued PD 1594 prescribing guidelines for government infrastructure projects and Section 4 54 thereof stated that they should generally be undertaken by contract after competitive public bidding.
>
> Then President Corazon Aquino issued E.O. No. 301 (1987) prescribing guidelines for government negotiated contracts. Pertinently, Section 62 of the Administrative Code of 1987 reiterated the requirement of competitive public bidding in government projects. In 1990, Congress passed RA 6957, 55 which authorized the financing, construction, operation and maintenance of infrastructure by the private sector. RA 7160 was likewise enacted by Congress in 1991 and it contains provisions governing the procurement of goods and locally-funded civil works by the local government units.
>
> Then President Fidel Ramos issued E.O. No. 302 (1996), providing guidelines for the procurement of goods and supplies by the national government. Then President Joseph Ejercito Estrada issued E.O. No. 201 (2000), providing additional guidelines in the procurement of goods and supplies by the national government. Thereafter, he issued E.O. No. 262 (2000) amending E.O. 302 (1996) and E.O. 201 (2000).
>
> On October 8, 2001, President Gloria Macapagal-Arroyo issued EO 40, the law mainly relied upon by the respondents, entitled Consolidating Procurement Rules and Procedures for All National Government Agencies, Government-Owned or Controlled Corporations and Government Financial Institutions, and Requiring the Use of the Government Procurement System. It accordingly repealed, amended or modified all executive issuances, orders, rules and regulations or parts thereof inconsistent therewith.
>
> On January 10, 2003, President Arroyo signed into law RA 9184. It took effect on January 26, 2004, or fifteen days after its publication in two newspapers of general circulation.[50]

In fact, petitioner even expressly testified that he was "in charge of the implementation of the projects identified by a congressman wherein his PDF will be used" and was "tasked under law to be the particular office to handle procurement and distribution."[51] But despite knowledge of this, he went on to state that "his responsibility stops" "after the delivery of the procured items to the office of the congressman."[52] He further admitted that he no longer knows "whether as a matter of fact, these procured items were delivered to the end-users" because he "cannot just go to the congressman" and ask "have you distributed the items already?"[53]

---

50 *Abaya v. Sec. Ebdane, Jr., id.* at 679-682.
51 *Rollo*, p. 462.
52 *Id.* at 467.
53 *Id.* at 468.

It is clear from the foregoing that petitioner could no longer feign ignorance to settled law or claim innocence to the acts charged against him. He persistently blames Navarro as the one who entered into the purchase agreement without public bidding. He insists that he merely performed his ministerial duty of signing the DVs, POs, RIVs, certificates, and checks, nothing more. The argument, however, fails to persuade. Just because his name does not appear in the contract, does not mean he should be absolved of any liability. To repeat, petitioner was responsible for the consummation of the contract. He approved the transaction and signed the checks, which ultimately led to the release of the funds.

On this matter, Our ruling in *Tio v. People*[54] is instructive. There, Tio, then Mayor of the Municipality of Luna, and Cadiz, then municipal accountant, were both convicted of violation of Section 3(e) of R.A. No. 3019 for awarding a road concreting project to a private corporation in the absence of public bidding. While the prosecution was unable to prove that Cadiz participated in the award of the contract, We did not hesitate to convict her for violation of Section 3(e) of R.A. No. 3019 for her participation in the unlawful release of funds in consummation of the illegal contract. In certifying the transactions and signing the DVs despite the presence of irregularities, Cadiz was remiss in her duty as municipal accountant, which is to ensure that public funds are disbursed only after the requirements of law are complied with. To the Court, this constitutes gross inexcusable negligence.

In the same vein, the Court ruled in *Umipig v. People*[55] that when public officers make certifications that the expense is necessary and lawful, said officer attests to the transactions' legality and regularity, which signifies that he or she had checked all the supporting documents before affixing his or her signature.[56] The existence of obvious infirmities, however, shows that the public officer negligently failed to exercise the reasonable diligence required by law thereby resulting in government loss in favor of private persons.

To be convicted of violation of Section 3(e), therefore, one's name and signature do not necessarily have to be written on a contract. For as long as the prosecution sufficiently proves the elements of the crime, public officers can rightfully be charged and convicted of the same by their acts of negligently approving the illegal transactions and signing checks for the disbursement of funds. The Court cannot turn a blind eye to their participation that is indispensable to the consummation of the transaction and for which, they must be held accountable.

---

54 See *Tio v. People*, *supra* note 33.
55 691 Phil. 272 (2012).
56 *Id.* at 306.

In a last-ditch effort to save his plight, petitioner continues his finger-pointing, but this time, he tries to pass the blame to his subordinates who allegedly assured him of the validity of the transactions. Invoking the doctrine laid down in *Arias v. Sandiganbayan*,[57] petitioner claims that as a head of office, he can rely in good faith on the acts of his subordinates as he cannot reasonably be expected to examine every single document relative to government transactions. Unfortunately for petitioner, the circumstances of this case prevent him from seeking refuge behind the *Arias* doctrine.

The *Arias* doctrine is not some magic cloak that can be used as a shield by a public officer to conceal himself in the shadows of his subordinates and necessarily escape liability.[58] In fact, the Court has had numerous occasions[59] to reject this defense in light of circumstances that should have prompted the government officials to exercise a higher degree of circumspection and, necessarily, go beyond what their subordinates had prepared.

Such is the case here. As duly observed by the Sandiganbayan, it is unacceptable that petitioner blindly signed the subject documents despite the fact that the absence of public bidding was readily ascertainable on their face, being as they were, mere "one-paged documents."[60] As a high-ranking DILG official, moreover, the first thing he should have determined was the mode of procurement employed in the transactions. Instead, he testified in court that his primary act as regional director, on his very first day, was to sign the checks for the *araro* procurement, simply because the accountant told him that the transactions were in order.[61] According to him, he "just relied so much on my [his] staff that I [he] do [did] not even know persons who entered into these transactions."[62] Had petitioner exerted the necessary precaution, he would have discovered that, as testified by the president of Revelstone, said company was never even involved in the production of medicines, *araro* tools, and drug testing kits.[63] Regrettably, and with no valid reason, he failed to pay due attention to the glaring illegality of the subject contracts.

All told, the Court is convinced that based on the totality of facts herein, petitioner was correctly convicted of violation of Section 3(e) of R.A. No. 3019. In blindly proceeding with the unlawful agreements, he failed to perform his sworn duty as head of the DILG-Caraga office in clear violation of E.O. No. 302 and its IRR. Had he only exercised enough prudence and been more circumspect, he could have easily discovered the

---

57 259 Phil. 794 (1989).

58 *Rivera v. People*, 749 Phil. 124, 151-152 (2014).

59 *Abubakar v. People*, *supra* note 35, citing *Office of the Ombudsman, et al. v. PS/Supt. Espina*, 807 Phil. 529 (2017); *Cesa v. Office of the Ombudsman*, 576 Phil. 345 (2008); *Alfonso v. Office of the President*, 548 Phil. 615 (2007); *Escara v. People*, 501 Phil. 532 (2005).

60 *Rollo*, p. 110.

61 *Id.* at 442.

62 *Id.* at 445.

63 *Id.* at 84-85.

absence of pubic bidding, and upheld the basic principles of transparency and accountability that his office was created to protect. Instead, he chose to tolerate the clear irregularities in the transactions which resulted in unwarranted preference in favor of San Marino and Revelstone. Not only were other suppliers precluded from submitting potentially more beneficial bids, the government was also effectively robbed of its right to determine the best possible prices in its acquisition of supplies.

Indeed, the rules on public bidding and on public funds disbursement are imbued with public interest.[64] As a system of transparency in the procurement process, said rules were formulated to guarantee that the public enjoys the most advantageous transactions at the least possible expense. It cannot be denied, however, that these procurement laws, no matter how good, become meaningless without accountable public officials to ensure faithful compliance therewith.

Accordingly, the Court affirms the penalty imposed by the Sandiganbayan. Section 9(a)[65] of R.A. No. 3019 provides that a violation of Section 3 of the same law shall be punished with, *inter alia*, "imprisonment for not less than six (6) years and one (1) month nor more than fifteen (15) years" and "perpetual disqualification from public office." Applying the provisions of the Indeterminate Sentence Law, petitioner is sentenced to suffer for each count in Criminal Case Nos. 27803 and 27805, the penalty of imprisonment for an indeterminate period of six (6) years and one (1) month, as minimum, to ten (10) years, as maximum, together with the aforementioned perpetual disqualification from public office.[66]

WHEREFORE, premises considered, the instant petition is **DENIED.** The Decision dated January 16, 2014 and the Resolution dated September 12, 2014 of the Sandiganbayan, First Division, in Criminal Case Nos. 27803 and 27805 are **AFFIRMED**. Petitioner Quirino M. Libunao is hereby found **GUILTY** beyond reasonable doubt of two (2) counts of violation of Section 3(e) of Republic Act No. 3019, otherwise known as the "Anti-Graft and Corrupt Practices Act," and accordingly, sentenced to suffer for each count the penalty of imprisonment for an indeterminate period of six (6) years and one (1) month, as minimum, to ten (10) years, as maximum, with perpetual disqualification from public office.

---

64 *Cabrera v. People, supra* note 35.

65 Section 9. *Penalties for violations.* — (a) Any public officer or private person committing any of the unlawful acts or omissions enumerated in Sections 3, 4, 5 and 6 of this Act shall be punished with imprisonment for not less than six years and one month nor more than fifteen years, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income.

Any complaining party at whose complaint the criminal prosecution was initiated shall, in case of conviction of the accused, be entitled to recover in the criminal action with priority over the forfeiture in favor of the Government, the amount of money or the thing he may have given to the accused, or the fair value of such thing.

x x x x

66 *People v. Naciongayo, supra* note 34.

SO ORDERED.

JHOSEP Y. LOPEZ
Associate Justice

WE CONCUR:
See Concurring Opinion

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Acting Chairperson

AMY C. LAZARO-JAVIER
Associate Justice

MARIO V. LOPEZ
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Acting Chairperson, First Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation. I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice

CERTIFIED TRUE COPY
LIBRADA C. BUENA
Division Clerk of Court
First Division
Supreme Court

FIRST DIVISION

G.R. Nos. 214336-37 — QUIRINO M. LIBUNAO, *petitioner*, ***versus*** **PEOPLE OF THE PHILIPPINES,** *respondent*.

Promulgated:

FEB 15 2022

x----------x

CONCURRING OPINION

CAGUIOA, *J.*:

Petitioner Quirino M. Libunao (Libunao), a former Regional Director of the Department of Interior and Local Government (DILG), was convicted in the Sandiganbayan for two (2) counts of violation of Section 3(e), Republic Act No. (RA) 3019 because of procurements in 1998 that did not go through public bidding.

The *ponencia* denies Libunao's appeal, ultimately ruling that the Sandiganbayan correctly convicted Libunao as he was guilty of giving unwarranted benefits in favor of two suppliers.

I agree.

I offer this Opinion, however, to clarify that Libunao is guilty not because of the mere failure to conduct public bidding for the procurements involved, but rather, because the elements of Section 3(e) of RA 3019 are present in these cases.

It must be emphasized that in criminal cases involving Section 3(e) of RA 3019 in relation to alleged irregularities in procurement committed by public officers, "findings of violations of procurement laws, rules and regulations, on their own, do not automatically lead to the conviction of the public officer under the said special penal law. It must be established beyond reasonable doubt that the essential elements of Section 3(e) of RA 3019 are present."[1]

Brief review of the facts

The controversy arose from the Countrywide Development Fund (CDF), a form of "pork-barrel" fund, allocated to Constantino H. Navarro, Jr. (Navarro), then the representative of the First District of Surigao del Norte to the House of Representatives. For the years 1997 to 1998, Navarro's CDF was "used to purchase assorted medicines, shabu testing kits, *araro* (rice paddy

---

[1] *Martel v. People*, G.R. Nos. 224720-23 & 224765-68, February 2, 2021, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67194>.

plows), notebooks, ballpens and blackboard erasers."[2] The DILG-CARAGA was one of the implementing agencies for Navarro's CDF, and Libunao was the Regional Director of DILG Region XI. Libunao participated in two procurements involving Navarro's CDF:

(1) Procurement of 45 boxes of assorted medicines from San Marino Laboratories Corporation (San Marino) in the amount of ₱2,000,000.00; and

(2) Procurement of 1,200 sets of *araro* tools from Revelstone Sales International (Revelstone) in the amount of ₱900,000.00.

It is undisputed that the procurements did not go through public bidding. The said fact was only discovered, however, upon post-audit made by the Commission on Audit (COA) on the utilization of Navarro's CDF. The COA also discovered an alleged overprice

> when they compared the suppliers' purchase price with the price of the same items obtained through personal canvass conducted in Surigao City and in Manila. The canvass was made with the use of a canvass or quotation forms with the listed items. The forms were given to suppliers for them to quote the prices of the items listed.[3]

Based on the result of COA's audit, Informations were eventually filed in the Sandiganbayan against Navarro, the Regional Directors of DILG-CARAGA, and the owners of the companies which were the suppliers for the projects covered by Navarro's CDF. The accusatory portions of the Informations where Libunao is one of the accused read:

> **CRIMINAL CASE NO. 27803**
> **[(Procurement of assorted medicines from San Marino)]**
>
> That in the month of October 1998, or sometime prior or subsequent thereto, in Region XIII, Caraga, Philippines, and within the jurisdiction of this Honorable Court, accused CONSTANTINO H. NAVARRO, JR., QUIRINO M. LIBUNAO, and BENITO R. CATINDIG, both high ranking public officials, being then the Congressman of the 1st District of Surigao del Norte, the Regional Director of the Department of Interior and Local Government (DILG)-Caraga Region, and Assistant Secretary for Support Services & Regional Operations, DILG-Quezon City, respectively, all high ranking public officials, committing the offense in relation to their official duties and taking advantage of their official functions, conspiring and confederating with each other and with accused ILUMINADA C. TUBLE, President of San Marino Laboratories Corporation, a private enterprise, and mutually helping one another, with evident bad faith and manifest partiality (or at the very least, through gross inexcusable negligence), did then and there willfully, unlawfully, and criminally give unwarranted benefits, advantage and preference to San Marino Laboratories Corporation and cause undue injury to the Government, by entering into a contract, without

---

2 *Rollo*, p. 87.
3 Id. at 71.

conducting the required public bidding, with said San Marino Laboratories, for the purchase of forty five (45) boxes of assorted medicine in the amount of TWO MILLION PESOS (₱2,000,000.00), which price was manifestly and grossly disadvantageous to the government considering that similar medicines available in the market, as canvassed by the Commission on Audit (COA), could have been purchased at only SEVEN HUNDRED SIXTY TWO THOUSAND TWO HUNDRED SIXTY TWO & 25/100 PESOS (₱762,262.25), inclusive of 10% allowance, thereby resulting to an overprice in the total amount of ONE MILLION TWO HUNDRED THIRTY SEVEN THOUSAND SEVEN HUNDRED FORTY & 75/100 PESOS (₱1,237,740.75), to the damage and prejudice of the government in the aforesaid amount of overprice.

CONTRARY TO LAW.[4]

CRIMINAL CASE NO. 27805
[(Procurement of *araro* tools from Revelstone)]

That during the period from October 16, 1998 to December 10, 1998, or sometime prior or subsequent thereto, in Region XIII, Caraga, Philippines, and within the jurisdiction of this Honorable Court, accused CONSTANTINO H. NAVARRO, JR., QUIRINO M. LIBUNAO, and BENITO R. CATINDIG, both high ranking public officials, being then the Congressman of the 1st District of Surigao del Norte, the Regional Director of the Department of Interior and Local Government (DILG)-Caraga Region, and Assistant Secretary for Support Services & Regional Operations, DILG-Quezon City, respectively, all high ranking public officials, committing the offense in relation to their official duties and taking advantage of their official functions, conspiring and confederating with each other and with accused GERARDO A. ROSARIO and MARIO TOKONG, proprietor and representative, respectively, of Revelstone Sales International, a private enterprise, and mutually helping one another, with evident bad faith and manifest partiality (or at the very least, through gross inexcusable negligence), did then and there willfully, unlawfully, and criminally give unwarranted benefits, advantage and preference to Revelstone Sales International and cause undue injury to the Government, by entering into a contract, without conducting the required public bidding, with said Revelstone Sales International, for the purchase of one thousand two hundred (1,200) sets of araro tools in the amount of NINE HUNDRED THOUSAND PESOS (₱900,000.00), which price was manifestly and grossly disadvantageous to the government considering that similar araro tools available in the market, as canvassed by the Commission on Audit (COA), could have been purchased at only SEVEN HUNDRED NINETY TWO THOUSAND PESOS (₱792,000.00), inclusive of 10% allowance, thereby resulting to an overprice of in the total amount of ONE HUNDRED EIGHT THOUSAND PESOS (₱108,000.00), to the damage and prejudice of the government in the aforesaid amount of overprice.

CONTRARY TO LAW.[5]

Based on the evidence presented during the trial, the Sandiganbayan made the following factual findings:

1. The funds used to pay the purchases came from accused Navarro's CDF;

---

4 Id. at 65-65.
5 Id. at 66.

2. There was no public bidding conducted;

3. Accused Navarro certified the urgency of the purchases;

4. The subject purchases had available substitutes in the market;

5. The accused-suppliers were pre-selected by the office of accused Navarro before the actual procurement;

6. All RIV's were signed by accused Navarro;

7. The DILG-CARAGA undertook the procurement process, including the payments;

8. The DILG-CARAGA delivered the supplies to the office of accused Navarro;

9. Accused Derecho and Libunao did not deny their signatures on the documents;

10. Except for accused Rosario of Revelstone, all accused private individuals admitted to have received the payments.[6]

From these factual findings, the Sandiganbayan proceeded to convict Libunao (and Carlos T. Derecho [Derecho], another Regional Director of DILG-CARAGA who was also an accused in the other Informations) for violations of Section 3(e) of RA 3019 for their participation in the procurements which did not undergo public bidding. Particularly with Libunao, the Sandiganbayan found him guilty because he approved the Requisition and Issue Vouchers (RIVs) and Purchase Orders (POs) which were necessary for the procurement, and he certified in the Disbursement Vouchers (DVs) that the "expenses were necessary and lawful, and incurred under his direct supervision."[7]

The *ponencia* upholds both of Libunao's convictions.

As already mentioned, I agree.

In the recent ruling of the Court *en banc* in *Martel v. People*,[8] the Court emphasized that

> in order to successfully prosecute the accused under Section 3 (e) of R.A. 3019 based on a violation of procurement laws, **the prosecution cannot solely rely on the fact that a violation of procurement laws has been committed**. The prosecution must prove beyond reasonable doubt that: (1) the violation of procurement laws caused undue injury to any party, including the government, or gave any private party unwarranted benefits,

---

6 Id. at 102-103.
7 Id. at 109.
8 Supra note 1.

advantage or preference, and (2) the accused acted with evident bad faith, manifest partiality, or gross inexcusable negligence.[9]

The prosecution was able to prove the foregoing in both of the two cases.

Elements of a violation of Section 3(e), RA 3019

To be found guilty of violating Section 3(e), RA 3019, the following elements must concur:

(1) the offender is a public officer;

(2) the act was done in the discharge of the public officer's official, administrative or judicial functions;

(3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and

(4) the public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference.[10]

The existence of the first two elements — that Libunao was a public officer and the acts in question were done in the discharge of his official functions — are not disputed. The disagreement lies in the existence of the third and fourth elements, particularly whether his act of signing the RIVs, POs, and DVs during the procurement process even as no public bidding was undertaken was (1) done in either evident bad faith, manifest partiality, or gross inexcusable negligence, and it (2) resulted in either causing the government undue injury or giving any private party unwarranted benefits.

Third element: Evident bad faith, manifest partiality, or gross inexcusable negligence

There is gross inexcusable negligence in this case. "'Gross inexcusable negligence' refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected."[11] "More than committing a breach of a legal duty, it is necessary that in committing the said breach, the public officer was inattentive, thoughtless, and careless."[12]

---

9 Id.
10 *Sison v. People*, 628 Phil. 573, 583 (2010).
11 *Albert v. Sandiganbayan*, G.R. No. 164015, February 26, 2009, 580 SCRA 279, 290.
12 *Martel v. People*, supra note 1.

In this case, there is indeed gross inexcusable negligence because, as the *ponencia* points out, Libunao had been with the DILG for 39 years, and he himself admitted that he was aware of the requirement to conduct public bidding for procurements in the government. Moreover, the following ratiocinations of the Sandiganbayan deserve merit:

> It is unbelievable that he just blindly signed the [RIVs] and [POs] upon presentation and assurance of his staff that the documents were in order, such that he did not know that the method of procurement used was direct contracting and not public bidding. The [RIVs] and the [POs] were just one-page documents, and it was readily ascertainable on their face that the brands of the medicines were indicated as well as the suppliers. In fact, as a ranking official of the DILG and the deciding authority, the first thing he should have determined was the mode of procurement employed in the transactions. He did not have to dig into piles of records to realize that the purchase did not go through a public bidding.
>
> [While] it has been held that heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations, it is not unreasonable to expect [Libunao] to exercise the necessary diligence in making sure at the very least that the proper formalities in the questioned transaction were observed — that public bidding was conducted. This step does not entail delving into intricate details of product quality, complete delivery or fair and accurate pricing. Unlike other minute requirements in government procurement, compliance or non-compliance with the rules on public bidding is readily apparent, and the approving authority can easily call the attention of the subordinates concerned.[13]

Fourth element: Undue injury or unwarranted benefits

There is "giving of unwarranted benefits" in these cases. To be clear, the law punishes the act of "*giving* [to] any private party any unwarranted benefits, advantage or preference in the discharge of his [or her] official administrative or judicial functions."[14] While it was not Libunao but Navarro who gave Revelstone or San Marino the preferences it obtained as supplier, Libunao's gross negligence ultimately enabled the consummation of the transactions, thereby allowing the aforementioned companies to obtain the unwarranted benefits they received.

To be clear, I maintain, as I had stressed in the case of *Villarosa v. People*,[15] that the element of "unwarranted benefits" must be seen from the lens of graft and corruption. Thus:

> As its name implies, and as what can be gleaned from the deliberations of Congress, RA 3019 was crafted as an anti-graft and corruption measure. At the heart of the acts punishable under RA 3019 is *corruption*. As explained by one of the sponsors of the law, Senator

---

13 *Rollo*, pp. 110-111.

14 RA 3019, Sec. 3(e).

15 G.R. Nos. 233155-63, June 23, 2020, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66280>. Italics and underscoring in the original.

> Arturo M. Tolentino, "[w]hile we are trying to penalize, the main idea of the bill is graft and corrupt practices. x x x Well, the idea of graft is the one emphasized." Graft entails the acquisition of gain in *dishonest* ways.
>
> Hence, in saying that a public officer gave "unwarranted benefits, advantage or preference," it is not enough that the benefits, advantage, or preference was obtained in transgression of laws, rules and regulations. Such benefits must have been given by the public officer to the private party with *corrupt intent, a dishonest design, or some unethical interest.* This is in alignment with the spirit of RA 3019, which centers on the concept of graft.[16]

I recognize, however, that in cases of gross negligence — meaning, the crime was committed through *culpa*, not *dolo* — the courts cannot expect to be shown proof of "corrupt intent, a dishonest design, or some unethical interest."[17] Thus, for cases where the crime was committed through the modality of gross negligence, it is enough that the actions, or inaction, of the accused resulted in ultimately causing undue injury or giving unwarranted benefits. It is well to clarify, however, that the negligence must be so gross — as the jurisprudential definition puts it, "with conscious indifference to consequences insofar as other persons may be affected"[18] — that the negligence would rise to the level of willfulness to *cause* undue injury or *give* unwarranted benefits.

Having said that, the alternative element of "causing undue injury to the government" is also present in this case, at least for the procurement of 45 boxes of assorted medicines from San Marino.

In *Cabrera v. People*,[19] the Court explained that an accused

> is said to have caused undue injury to the government or any party when the latter sustains **actual loss or damage, which must exist as a fact and cannot be based on speculations or conjectures**. The loss or damage need not be proven with actual certainty. However, there must be "some reasonable basis by which the court can measure it." **Aside from this, the loss or damage must be substantial.** It must be "more than necessary, excessive, improper or illegal."[20]

Based on the foregoing standards, the prosecution's evidence failed to establish the existence of undue injury in the procurement of 1,200 sets of *araro* tools from Revelstone but it was able to establish the same in the procurement of 45 boxes of assorted medicines from San Marino. For this, I note that the Sandiganbayan observed that "except for the x x x 45 boxes of medicines from San Marino, the allegation of overprice was not sufficiently established."[21]

---

16 Concurring Opinion of Associate Justice Alfredo Benjamin S. Caguioa in *Villarosa v. People*, G.R. Nos. 233155-63, June 23, 2020, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66280>.

17 Id.

18 Supra note 14.

19 *Cabrera v. People*, G.R. Nos. 191611-14, July 29, 2019, 910 SCRA 578.

20 Id. at 588. Emphasis supplied.

21 *Rollo*, p. 114.

The Sandiganbayan, citing jurisprudence on the matter, explained that "an allegation of overprice is not provable by plainly comparing apple to apple or orange to orange. The comparison must be between the same variety of apples or oranges, bought at or about the same period, within the same locality."[22] The prosecution's evidence, however, failed to comply with the jurisprudential parameters to establish overprice.[23] The Sandiganbayan also noted that even the auditor, who was a prosecution witness, "aired a reservation as to the conclusiveness of their findings of overprice."[24] Thus, in the absence of any conclusive proof on overprice, there consists reasonable doubt on the existence of the element of undue injury.

The foregoing, however, applies only to the procurement of *araro* tools from Revelstone. Overprice — and therefore, undue injury on the part of the government — was duly proven in the procurement of 45 boxes of assorted medicines from San Marino. The Sandiganbayan noticed that in these consolidated cases, there were two procurements from San Marino: (1) procurement of 97 boxes of medicines, where the signatory was Regional Director Derecho, where each box was priced at ₱20,628.96; and (2) procurement of 45 boxes of medicines, where Libunao was the signatory, where each box was priced at ₱44,445.00.[25] The Sandiganbayan noted that in both procurements, the boxes contained the same set of medicines.[26] The price difference in the two procurements was acknowledged and admitted by the President of San Marino herself, and the Sandiganbayan adjudged her civilly liable to return the overprice of ₱1,071,721.80.[27]

Given the foregoing proof on overprice, there is thus no doubt that the element of undue injury was present in the procurement of the 45 boxes of medicines from San Marino. Libunao should thus be convicted for violation of Section 3(e) of RA 3019 for this procurement because *his gross inexcusable negligence caused undue injury to the government* in the amount of ₱1,071,721.80.

Conclusion

In sum, I find that Libunao should be convicted on both counts of violating Section 3(e), RA 3019. He should be convicted in the charge involving the procurement of 45 boxes of medicines from San Marino, not simply because the procurement did not go through public bidding as required by law, but because it was attended by gross inexcusable negligence that caused undue injury to the government and gave unwarranted benefits to San Marino. In the same vein, Libunao should be convicted in the charge involving the procurement of the 1,200 sets of *araro* tools from Revelstone, not because the procurement did not go through public bidding, but because it was

---

22 Id. at 117.
23 Id. at 115.
24 Id. at 116.
25 Id. at 112.
26 Id.
27 Id. at 121.

attended by gross inexcusable negligence that gave unwarranted benefits to Revelstone.

Based on these premises, I vote to **DISMISS** the appeal and **AFFIRM** the conviction of petitioner Quirino M. Libunao for two (2) counts of violating Section 3(e), Republic Act No. 3019.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFIED TRUE COPY
LIBRADA C. BUENA
Division Clerk of Court
First Division
Supreme Court